

Filing

FILED
08 MAY 28 PM 3:14
NICHAN
SLEEK U.S. DISTRICT COURT
NORTH DISTRICT OF CALIFORNIA

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Name DOSS STEVEN LEA
(Last) (First) (Initial)

Prisoner Number C-31229

Institutional Address CALIFORNIA STATE PRISON SOLANO, P.O. BOX 4000
VACAVILLE, CA 95696-4000

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

STEVEN LEA DOSS
(Enter the full name of plaintiff in this action.)

vs.

W. D. K. SISTO, WARDEN ET AL.,

(Enter the full name of respondent(s) or jailor in this action)

CV

08

2688

Case No. _____
(To be provided by the clerk of court)

**PETITION FOR A WRIT (PR)
OF HABEAS CORPUS**

Read Comments Carefully Before Filling In

When and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

1 Who to Name as Respondent

2 You must name the person in whose actual custody you are. This usually means the Warden or
 3 jailor. Do not name the State of California, a city, a county or the superior court of the county in which
 HEARINGS
 4 you are imprisoned or by whom you were convicted and sentenced. These are not proper
 5 respondents.

6 If you are not presently in custody pursuant to the state judgment against which you seek relief
 7 but may be subject to such custody in the future (e.g., detainers), you must name the person in whose
 8 custody you are now and the Attorney General of the state in which the judgment you seek to attack
 9 was entered.

10 A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

11 1. What sentence are you challenging in this petition?

12 (a) Name and location of court that imposed sentence (for example; Alameda
 13 County Superior Court, Oakland):

14 ALAMEDA COUNTY SUPERIOR COURT OAKLAND, CA

15 Court

Location

16 (b) Case number, if known 71100

17 (c) Date and terms of sentence MAY 27, 1981

18 (d) Are you now in custody serving this term? (Custody means being in jail, on
 19 parole or probation, etc.) Yes X No

20 Where?

21 Name of Institution: CALIFORNIA STATE PRISON SOLANO

22 Address: P.O. BOX 4000, VACAVILLE, CA 95696

23 2. For what crime were you given this sentence? (If your petition challenges a sentence for
 24 more than one crime, list each crime separately using Penal Code numbers if known. If you are
 25 challenging more than one sentence, you should file a different petition for each sentence.)

26 KIDNAP FOR ROBBERY CAL PENAL CODE §209: PETITIONER IS
 27 CHALLENGING THE 2006 DENIAL OF PAROLE

3. Did you have any of the following?

Arraignment: Yes X No

Preliminary Hearing: Yes X No

Motion to Suppress: Yes _____ No X

4. How did you plead?

Guilty _____ Not Guilty _____ Nolo Contendere X

Any other plea (specify) _____

5. If you went to trial, what kind of trial did you have?

Jury _____ Judge alone _____ Judge alone on a transcript _____

6. Did you testify at your trial? Yes _____ No _____

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes x No

(b) Preliminary hearing Yes X No

(c) Time of plea Yes X No

(d) Trial Yes _____ No _____

(e) Sentencing Yes X No

(f) Appeal Yes _____ No _____

(g) Other post-conviction proceeding Yes _____ No _____

8. Did you appeal your conviction? Yes _____ No X

(a) If you did, to what court(s) did you appeal?

Court of Appeal Yes _____ No _____

Year: _____ Result: _____

Supreme Court of California Yes _____ No _____

Year: _____ Result: _____

Any other court Yes _____ No _____

Year: _____ Result: _____

(b) If you appealed, were the grounds the same as those that you are raising in this

petition? Yes _____ No X

(c) Was there an opinion? Yes _____ No _____

(d) Did you seek permission to file a late appeal under Rule 31(a)?

Yes _____ No X

If you did, give the name of the court and the result:

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes _____ No _____

[Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. §§ 2244(b).]

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court: _____

Type of Proceeding: _____

Grounds raised (Be brief but specific):

a. _____

b. _____

c. _____

d. _____

Result: _____ Date of Result: _____

II. Name of Court: _____

Type of Proceeding: _____

Grounds raised (Be brief but specific):

1 a. _____
 2 b. _____
 3 c. _____
 4 d. _____

5 Result: _____ Date of Result: _____

6 III. Name of Court: _____

7 Type of Proceeding: _____

8 Grounds raised (Be brief but specific):

9 a. _____
 10 b. _____
 11 c. _____
 12 d. _____

13 Result: _____ Date of Result: _____

14 IV. Name of Court: _____

15 Type of Proceeding: _____

16 Grounds raised (Be brief but specific):

17 a. _____
 18 b. _____
 19 c. _____
 20 d. _____

21 Result: _____ Date of Result: _____

22 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

23 Yes X No _____

24 Name and location of court: CALIFORNIA STATE SUPREME COURT

25 B. GROUNDS FOR RELIEF

26 State briefly every reason that you believe you are being confined unlawfully. Give facts to
 27 support each claim. For example, what legal right or privilege were you denied? What happened?

28 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: U.S. CONST. 14th AMEND. DUE PROCESS: NO EVIDENCE
6 TO SUPPORT THE DENIAL OF PAROLE

7 Supporting Facts: THERE WAS NO EVIDENCE PRESENTED AT THE 2006
8 PAROLE HEARING TO SUPPORT THE BOARD'S DETERMINATION THAT
9 PETITIONER WOULD POSE AN UNREASONABLE RISK OF DANGER TO THE
10 PUBLIC IF RELEASED FROM PRISON

11 Claim Two: _____

12 _____
13 Supporting Facts: _____
14 _____
15 _____
16 _____

17 Claim Three: _____

18 _____
19 Supporting Facts: _____
20 _____
21 _____
22 _____

23 If any of these grounds was not previously presented to any other court, state briefly which
24 grounds were not presented and why:

25 _____
26 _____
27 _____
28 _____

1 List, by name and citation only, any cases that you think are close factually to yours so that they
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning
3 of these cases:

4 PLEASE SEE ATTACHED SHEETS
5
6

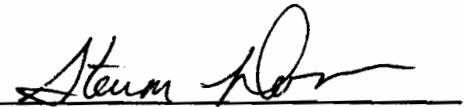
7 Do you have an attorney for this petition? Yes _____ No X

8 If you do, give the name and address of your attorney:
9

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12
13 Executed on May 20, 2008

14 Date



Signature of Petitioner

15
16
17
18
19
20 (Rev. 6/02)

GROUND

THE BOARD'S DENIAL OF PAROLE BASED UPON THE DETERMINATION THAT PETITIONER WOULD POSE A CURRENT UNREASONABLE RISK OF DANGER TO PUBLIC SAFETY IS NOT SUPPORTED WITHIN THE RECORD; VIOLATING THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION; DUE PROCESS

MEMORANDUM AND POINTS OF AUTHORITY

The Board does have great latitude in their decisions. But their decisions must be supported by some evidence within the record, “ we have held that the Supreme Court ha [s] clearly established that a parole board’s decision deprives a prisoner of due process with respect to this interest if the board’s decision is not supported by ‘some evidence’ in the record, or is otherwise arbitrary.” *Irons* 505 F.3, AT 857,(quoting *Hill*, 472 U.S. at 457; *Sass*, 461 F. 3d. at 1128-29.) “The test is not whether some evidence supports the reasons the [Board] cites for denying parole, but whether some evidence indicates a parolee’s release unreasonably endangers public safety. Some evidence of a particular factor does not necessarily equate to some evidence the parolee’s release unreasonably endangers public safety.” *Lee*, 143 Cal. App. 4th at 1408 (citations and footnotes omitted) See also *In re Elkins*, 144 Cal. App. 4th 475, 499(Cal. Ct. App. 2006)

California courts have made clear that the “findings that are necessary to deem a prisoner unsuitable for parole *Irons*, 505 F.3d. at 857,are not that a particular factor or factors indicating unsuitability exist, but that a prisoner’s release will unreasonably endanger public safety.” In re Dannenberg, 34 Cal. 4th at 1071, 23 Cal. Rptr. 3d. at421, 104 F.3d 783,*In re Lee* 143 Cal. App. 4th 1400, 1408 (Cal. Ct. App. 2006). *In re Scott*, 133 Cal. App. 4th 573, 595 (Cal. Ct. App. 2005)

See *Cal. Penal Code 3041 (b)* (providing that the Board shall set a release date unless consideration of the public safety requires a more lengthy period of incarceration for this individual”) For our purpose, then [t]he test is not whether some evidence supports the reasons the [Board] cites for denying parole, but whether some evidence indicates a parolee’s release unreasonably endangers public safety. The statute required to be considered, and the overarching consideration is public safety (citing *Cal. Penal Code 3041(b)*). The Board presented no evidence that Petitioner presents an unreasonable danger to public safety. The Board presented as evidence the commitment offense, which is more than twenty seven (27) years old and cannot be used as a reliable predictor of Petitioner’s current or future dangerousness. The Board also considered Petitioner’s past criminal behavior and Petitioner’s substance abuse, again those factors cannot be used as reliable evidence to support their determination that Petitioner poses a current unreasonable risk to public. In Petitioner’s twenty seven years of custody, there have been no rules violation for any illegal substance or alcohol. Petitioner’s current psychological evaluation rates his violence potential at low, And stated that he was an excellent candidate for parole.. Yet, the Board came to a separate and contrary conclusion, that Petitioner poses a current unreasonable risk of danger to the public. Again there must be some evidence that is current and reliable to support the Board’s conclusion.. Without such evidence the Board deprived Petitioner of the clearly held due process *Irons, 505 F.3d. at 857.*

Petitioner has served over the matrix term for first degree murder, Petitioner’s offense was kidnap for robbery. The offense is serious but the gravity must be less than that of murder, yet Petitioner has served more time than most murderers. The highest term set in the Cal. Code of Regulations matrix for the offense of kidnap for robbery is sixteen years (16). Without serious misconduct, there can be no excuse for the length of time Petitioner has served. The sentencing

Judge stated that if Petitioner behaved well in prison, he would recommend that Petitioner be released at the earliest date. The Board has either disregarded the Judge's recommendation or failed to give that recommendation any consideration. That deprives Petitioner of the individualized consideration which is specified in Board regulations. (*Scott II, supra, Cal. App. 4th at p. 596*)

The information the Board shall consider in there decision is clearly stated in Cal. Code of Regulations, tit. 15, section 2402 (b), all reliable and relevant information, the sentencing Judge's recommendation is very relevant when setting a term. Yet the Board based their decision on factors that numerous California Courts have ruled unreliable. The Board's decisions must be supported by some evidence and that evidence must be relevant and reliable. The Board has gone well beyond their limit of discretion in this decision

"While the Board need not recite every factor it considers in a parole hearing" it must at a minimum "acknowledge those circumstances that tend to bear on an inmate's suitability. (*Scott I, supra, 110 Cal. App. 4th at p. 898*) . As in *Scott II*, "indifference to the [the] large body of evidence [showing stress under which the crime was committed] significantly distorts the nature and gravity of [the] offense and denies Petitioner the right to 'individualized consideration of all relevant factors' specified in the Board regulations. (*Scott II, supra, 133 Cal. App. 4th at p. 596*)

CONCLUSION

When the record is reviewed, by this Court, there can be only one conclusion, that the Board's determination was not supported by any evidence that was reliable or relevant to the overarching concern of public safety. Petitioner has served well beyond the limits of the guidelines set forth in the regulations. This Court cannot let a decision based upon no evidence stand, with the

numerous recent court rulings addressing the “some evidence” The Board’s decision must be supported by some evidence within the record, “..we have held that the Supreme Court ha[s] clearly established that a parole board’s decision deprives a prisoner of due process with respect to this interest if the board’s decision is not supported by “some evidence” in the record, or is otherwise arbitrary.” *Irons*, 505 F.3d at 857, (quoting *Hill*, 472 at 457; *Saas*, 461 F.3d at 1129-29) “The test is not whether some evidence supports the reasons the [Board] cites for denying parole, but whether some evidence indicates a parolee’s release unreasonably endangers public safety. Some evidence of a particular factor does not necessarily equate to some evidence the parolee’s release unreasonably endangers public safety. “ *Lee*, 143 Cal.App. 4th at 1408 (citations and footnotes omitted) See also *In re Elkins*, 144 Cal. App. 4th 475, 499.

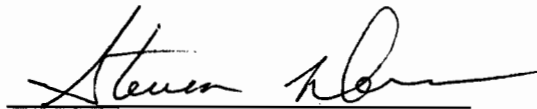
PROOF OF SERVICE BY MAIL

I, Steven Lea Doss, certify that I am over the age of eighteen years, a resident of California State Prison Solano and a party to this action. That on this day, May 20, 2008 I served a true copy of the document: PETITION FOR WRIT OF HABEAS CORPUS to the person(s) hereinafter listed by placing said document in a postage paid envelope and placing that envelope in the United States Mail Box provided by C.S.P. Solano.

United States District Court
The Norther District of California
U. S. Courthouse
450 Golden Gate Avenue
San Francisco, CA 94102

I, Steven Lea Doss declare under the penalty of perjury that the foregoing is true and correct.

May 20, 2008

A handwritten signature in black ink, appearing to read "Steven Lea Doss", is written over a horizontal line.

Steven Lee Doss C-31229
C.S.P. Solano
P.O. Box 4000
Vacaville, Ca 95656

read

MAY 27 2008

RECEIVED

Cler
Unite
Nork
U.S.
450
Sen

Confidential legal mail

CSP SOLANO
STATE PRISON



UNITED STATES POSTAGE
02 1A
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MAILED FROM ZIP CODE 95687
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MAY 22 2008
PITNEY BOWLES

CALIFORNIA STATE PRISON SOLANO

of the Coast
States District Court &
ern Dist. for California
Court house
Golden Gate Avenue
San Francisco, CA.
94102

